



Setti D. Warren  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	November 9, 2010
Land Use Action Date:	January 11, 2011
Board of Aldermen Action Date:	February 7, 2011
90-Day Expiration Date:	February 9, 2011

DATE: November 4, 2010  
TO: Board of Aldermen

FROM: Candace Havens, Interim Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning ET  
Derek Valentine, Senior Planner

SUBJECT: Petition # 278-10, MARK AND JANE CONROY, for a SPECIAL PERMIT, SITE PLAN APPROVAL to alter a NONCONFORMING USE/STRUCTURE from a mixed-use funeral home with one residential unit to a three-family residential use at 439 WASHINGTON STREET, Ward 1, Newton Corner, on land known as SBL 12, 6, 7, containing 4,516 sq. ft. of land in District zoned BUSINESS 2. Ref. 30-24, 30-21(a)(2)(b), 30-21(b), 30-11(d) of the City of Newton Zoning Ordinance Revised 2007.

CC: Mayor Setti D. Warren

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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### **EXECUTIVE SUMMARY:**

The petitioner has a 4,516 square foot lot in Newton Corner improved with a 6,853 square-foot building in the Business 2 district. The building is legally nonconforming in almost every way: lot size, frontage, setbacks, FAR, building height, and number of stories. While the building was constructed as a two-family home in 1902, the first floor has been used as a funeral home since 1948, and the second and third floors have been a single-family residential unit since that time. The proposal is to eliminate the funeral home use and to convert the property into a three-family rental property.

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#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When reviewing this report, the Board shall consider whether the following findings apply:

- The proposed structure is not more detrimental to the neighborhood than the existing use.
  - The proposed use is consistent with the other multi-family residences in the neighborhood.
  - The petition is consistent with the *Newton Comprehensive Plan* since it will provide rental units which will offer an alternative for those who otherwise cannot afford to purchase a home in Newton. The site is also in close proximity to MBTA express buses and Newton Corner amenities.
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## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD



*Existing Garage (To be demolished)*



*Two-family at 445 Washington Street*



*East side of subject property*

### A. Neighborhood and Zoning

The property is located on Washington Street between Jewett Street and Hovey Street in Newton Corner. The area along Washington Street is mainly comprised of commercial uses. Jewett Street and Hovey Street are lined with multi-family residences. Across Washington Street from the site is the MBTA Commuter Rail/Massachusetts Turnpike corridor. The ramps to and from the Massachusetts Turnpike are also across the street from the site. Most of the area along Washington Street is zoned Business 1 & 2, although the subject property borders a large area of Multi-Residence 2 district on three sides.

### B. Site

The site is comprised of 4,516 square feet. It is nearly level, with a two-foot elevation gain between the low point at Washington Street and the rear lot line. The building covers most of the lot. As a result, the site has a high floor area ratio (FAR) of 1.52 in a zone where an FAR of 1.0 is allowed. Both the FAR and the lot coverage are legal, pre-existing nonconformities and will be made less nonconforming as a result of this petition because a small section of the rear of the existing building will be demolished. The property is nonconforming with regard to front, side and rear setbacks and will be made slightly less nonconforming with the removal of the back portion of the building. There is virtually no space on the lot for new landscaping.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The petitioner is proposing to turn an existing mixed-use funeral home with one dwelling unit above into a three-family rental property. Multi-family dwellings are allowed in the Business 2

zone with a Special Permit from the Board of Aldermen.

### B. Buildings and Site Design

Originally, the property was a two-family residence. It was converted to its current use in 1948. The existing building was built before the adoption of the Newton Zoning Ordinance. As a result, the property is nonconforming in almost every way. The lot area is less than half of what is required under current zoning ordinances. The front and side setbacks are legally nonconforming, as are the building height and number of stories. The existing building extends over the eastern property line by approximately 0.4 feet, but this portion of the building is slated for demolition as part of this project. The new side setback will be 11.7 feet on the eastern side after the demolition. Since the structure is nonconforming, its modification requires a Special Permit.

With the exception of the removal of the rear portion of the building, there will be very few exterior changes. Most of the work will be interior as a result of retrofitting the building to accommodate three dwelling units.

***It is unclear how the rear portion of the lot will be used after the demolition of the garage and back part of the building. The petitioner should clarify how this area will be used and if parking will be provided in this space.***

### C. Landscaping

No landscape plan has been submitted as part of this petition and none is necessary. The property offers a very small area of pervious surface which already has mature landscaping.

### D. Parking and Circulation

It is unclear if parking will be maintained on site. Although the proposed use is likely a less-intensive use than the former use as a funeral home, the Planning Department is concerned that adding additional residential units will increase the amount of long-term parking that Newton streets will have to absorb. As it currently exists, the site offers roughly two tandem spots and an existing garage. The garage is going to be removed as part of this petition and it is unclear if the existing tandem parking will remain. ***The Planning Department recommends maintaining all parking capacity that currently exists on the site and adding more if possible.*** Tandem parking could be located to the west and north of the existing building if an easement is provided across property at 445 Washington Street. The petitioner has indicated that he will be providing for such an arrangement as he owns this adjacent property.

### E. Affordable Housing

Since the petition is for a three-unit residential building where one unit is preexisting (for a net

increase of two units), no affordable units are required by Newton Zoning Ordinances Section 30-24(f).

#### IV. COMPREHENSIVE PLAN

The Newton Comprehensive plan encourages the preservation of the existing scale of the city's housing stock while increasing the diversity of housing options within the City. This petition will be providing three rental units without making any substantial changes to the character of the neighborhood. This petition will also be supporting the goal of providing housing within close proximity to village amenities and public transportation.

#### V. TECHNICAL REVIEW

A. Technical Considerations: The attached Zoning Review Memorandum dated September 16, 2010 outlines the relief requested by the petitioner. Section 30-21(a)(1)(a) permits certain types of modifications to nonconforming structures as of right. This project does not meet any of the criteria for as of right changes, which is why the petitioner is seeking a Special Permit. Section 30-11(d) requires a Special Permit for a multi-family residential use in the Business 2 zone. Although the height of the building would require a Special Permit today, there were no height restrictions in place when the building was built. Since this petition will not be increasing this existing nonconformity, no relief is required for the building height.

#### B. Other Reviews:

1. Engineering Department: Since the changes to the site are minimal, no Engineering Department review is necessary for this project.
2. Fire Department: The Fire Department has approved the submitted plans for accessibility and water availability.
3. Historic Preservation: This project was not determined historically significant

#### VI. ZONING RELIEF SOUGHT:

Based on the completed Zoning Review Memorandum dated September 16, 2010 (*See Attachment C*), the petitioner is seeking approval through or relief from:

- Section 30-21(a)(2)(b) and Section 30-21(b), to allow alteration of a nonconforming structure.
- Section 30-24, seeking a Special Permit from the Board of Aldermen.
- Section 30-11(d), to allow a multifamily dwelling in the BU-2 zone.

#### VII. SUMMARY OF THE PETITIONER'S RESPONSIBILITIES:

- The petitioner should clarify if parking will be provided on site.

**ATTACHMENTS:**

***Attachment A: Zoning Map***

***Attachment B: Land Use Map***

***Attachment C: Zoning Review Memorandum, dated September 16, 2010***







# ATTACHMENT A

## 439 Washington Street Vicinity Zoning

City of Newton,  
Massachusetts



### Legend

-  Single Residence 1
-  Multi-Residence 1
-  Multi-Residence 2
-  Business 1
-  Business 2
-  Public Use



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
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GIS Administrator - Douglas Greenfield

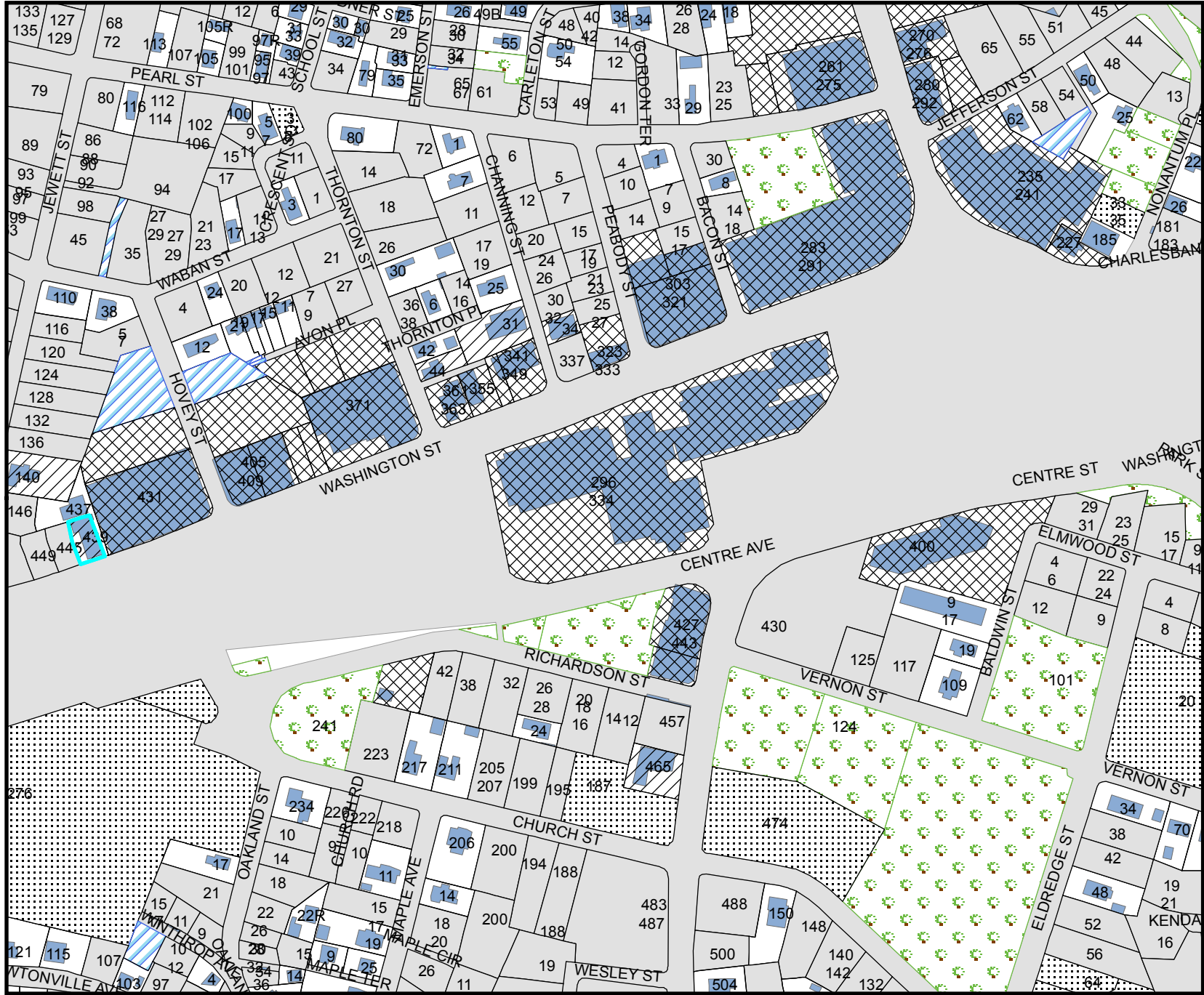
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MAP DATE: November 05, 2010



# 439 Washington Street Vicinity Land Use

City of Newton,  
Massachusetts



## Legend

- Single Family Residential
- Multifamily Residential
- Commercial
- Mixed Use
- Vacant Land
- Open Space
- Nonprofit Organizations



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0 50 100  
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## ***Zoning Review Memorandum***

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Date: 9/16/10

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

Cc: Jason Rosenberg, Attorney representing applicant  
Candace Havens, Interim Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Convert existing mixed use building into three-unit multifamily residence**

<b>Applicant: Mark Conroy and Jayne Conroy</b>	
<b>Site:</b> 439 Washington St	<b>SBL:</b> 12006 0007
<b>Zoning:</b> BU-2	<b>Lot Area:</b> 4,516 square feet
<b>Current use:</b> Funeral Home/One-Family Dwelling	<b>Proposed use:</b> Three-Family Dwelling

### **Background:**

The subject property is a 4,516 square foot lot in a BU-2 zone improved with a mixed-use building. The building was converted from a two-family to a mixed-use building in 1948; the first floor and basement have been used as a funeral home and the second and third floors as a single residence. The following review is based on plans and materials submitted to date as noted below.

#### Plans and materials reviewed:

- Site Plans by VTP Associates
  - Site Plan showing Existing Conditions prepared
  - Site Plan showing Proposed Conditions
  - Area Plan
- Architectural drawings, Sergio Modigliani
  - Existing Basement & First Floor Plans
  - Existing Second & Third Floor Plans
  - Existing Roof Plan & Building Sections
  - Proposed Basement & First Floor Plans
  - Proposed Second & Third Floor Plans
  - Building Elevations
- Newton Historical Commission Demolition Review Decision
- Deed of Martin E. Conroy to Mark S. Conroy
- Deed of Mark S. Conroy to Mark S. Conroy and Jayne Conroy

**Administrative determinations:**

1. The property is in the BU-2 zone and must comply with the dimensional standards of §30-15, Tables 1 and 3 (see chart below).

<b>SR-1 Zone</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot size	10,000 square feet	<b>4,516 square feet</b>	<b>No Change</b>
Frontage	80 feet	<b>50 feet</b>	<b>No Change</b>
Setbacks <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	10 feet 15 feet 0 feet	<b>6.1 feet</b> <b>0.4 feet over</b> 0.03 feet	<b>No change</b> <b>4.3 feet</b> 11.7 feet
FAR	1.0	<b>1.52</b>	<b>1.27</b>
Building Height	24 feet	<b>31.4*</b>	<b>No Change</b>
Maximum Stories	2	<b>3*</b>	<b>No Change</b>

\* Building heights of up to 36 feet and three stories are allowed in the BU2 by special permit, however, the existing condition is not under special permit as the building is a pre-existing legally nonconforming structure built before these dimensional controls.

2. Having been constructed before zoning controls were implemented the building is nonconforming in nearly every aspect. Although the proposed renovations do not increase that degree of nonconformity, the proposed changes are not among those explicitly made available as of right either under §30-21(a) (new use permitted by right) or §30-21(c) (*de minimis*). Therefore, the applicant requires a special permit from the Board of Aldermen per §30-21(a)(2)b) and §30-21(b) to alter the structure and the use.
3. The applicant requires a special permit under §30-11(d)(8) to use the existing building as a three unit multifamily dwelling in a BU-2 zone.
4. See “Zoning Relief Summary” below:

<b>Zoning Relief Summary</b>		
<b>Ordinance</b>	<b>Change of Use</b>	<b>Action Required</b>
§30-21(a)(1)a) and §30-21(b)	Allow alteration of nonconforming structure	S.P. per §30-24
§ 30-11(d)	Allow multifamily dwelling in the BU-2 zone	S.P. per §30-24

## ***Zoning Review Memorandum***

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To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
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Cc: Jason Rosenberg, Attorney representing applicant  
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